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ERNEST D. BUFF			GARCIA, ERNESTO	
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231 SOMERVILLE ROAD				3679
BEDMINSTER, NJ 07921				
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			03/09/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/037,325	EBERLE, HARRY W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ERNESTO GARCIA	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 February 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 29-38 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 29-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 12 February 2009 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 12, 2009 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

The drawings were received on February 12, 2009. These drawings are accepted. However, the drawings contain a few discrepancies.

The drawings are objected to under 37 CFR 1.83(a) because Figure 7 fails to show an accurate cross-sectional view of Figures 1-3, as described in the amended specification at page 26, line 14. Note that the device in Figure 7 is not the device

shown in Figures 1-3 since the device 1, in Figures 1-3, has planar walls 5 and 7 while than in Figure 7 has rounded walls (unreferenced). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

The drawings are objected to because it is unclear what material the cross-hatching of the beams 45 and 47 represents. Applicant is urged to review MPEP 608.02 (IX) for the proper cross-hatching. Further, it is unclear why the beams in Figure 7 are shown in cross-section when the original specification indicates, for example, at page 32, line 1, that the beam 45, in Figure 7, is an end view, and not cross-sectional views.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: the description of Figure 7, as amended at page 26, line 14, is inaccurate since the description “cross-sectional, end view” makes unclear whether Figure 7 is a cross-sectional view or an end view. The same objection applies to the description of Figure 8. It should be noted that an end view is not a cross-sectional view, or vice versa. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 33-38 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are the joinder of the anchoring device and the decking boards. Note that the claim set forth a decking system yet the claim merely recites a listing of parts without any interaction. The claim

merely sets forth the anchoring device, in lines 25-27, being “adapted to maintain said top element in a predetermined position during use for joinder of two adjacent boards, which have been pre-cut with receiving slots”. However, this does not mean that the anchoring device is positively cooperating with the decking boards to render parts interacting together thus defining a system as claimed.

***Claim Rejections - 35 USC § 102***

Claims 29, 31, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Great Britain patent, GB-1,350,754 to Child.

Regarding claim 29, the British patent discloses, in Figure 10, an anchoring device consisting essentially of a substantially flat horizontal top element **A10** (see marked-up attachment provided in the last Office action), at least one substantially vertical support member **A20**, and a substantially flat horizontal bottom element **A30**. The top element **A10** has a top view configuration including two sides **A2** and a predetermined first width **A3** as measured side to side. The first width **A3** is measured at a maximum width between the sides **A2**. The top element **A10** has an imaginary center line **A4**. The support member **A20** is attached to an underside **A6** of the top element **A10** along the center line **A4** and the support member **A20** extends downwardly therefrom. The support member **A20** has two sides **A7** and a predetermined second width **A8** as measured side to side at a maximum width. The

bottom element **A30** has a flat bottom view configuration, which includes sides **A31**, and having a generally trapezoidal shape, and a predetermined third width **A11** as measured side to side at a maximum width at a trapezoidal base **B1**. The first width **A3** is greater than the second width **A8** and the third width **A11**. The third width **A11** is greater than the second width **A8**. The device is made of molded plastic material (column 4, lines 72-84).

Applicant is reminded that the anchoring device can be adapted to maintain the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon a support board which two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards.

Further, for the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising". See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355. See MPEP 2111.03.

Regarding claim 31, the two sides **A2** of the top element **A10** are symmetric relative to one another.

Regarding claim 32, the two sides **A2** of the top element **A10** are parallel to one another.

***Claim Rejections - 35 USC § 103***

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Child, GB-1,350,754, in view of Curtis, Jr. 4,154,172.

Regarding claim 30, Child, as discussed fails to disclose the vertical support member having recesses with support columns located therebetween. Curtis, Jr. teaches in Figure 2 and 4, a support column **17'**, **21** having a recess to allow the insertion of a fastener therethrough (col. 2, lines 30-33, and col. 2, line 68, to column 3, line 4). Therefore, as taught by Curtis, Jr., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a recess on the vertical support member to allow the insertion of a fastener in each recess. Further, it should be noted that one skilled in the art would have placed more than one recess to fasten the device at more than one location. Given the modification, support columns would have been inherently located between the recesses.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al., 5,704,181, in view of Aschheim, 6,012,256.

Regarding claim 29, Fisher et al. disclose, in Figure 3, an anchoring device comprising a substantially flat horizontal top element **14b**, at least one substantially vertical support member **14c**, and a substantially flat horizontal bottom element **14a**. The top element **14b** has a top view configuration including two sides **A2** (see marked-up attachment provided in the last Office action). and a predetermined first width **A3** as measured side to side. The first width **A3** is measured at a maximum width between the sides **A2**. The top element **14b** has an imaginary center line **A4**. The support member **14c** is attached to an underside **A6** of the top element **14b** along the center line **A4** and the support member **14c** extends downwardly therefrom. The support member **14c** has two sides **A7** and a predetermined second width **A8** as measured side to side at a maximum width. The bottom element **14a** has a flat bottom view configuration which includes sides **A10** and having a generally trapezoidal shape, and a predetermined third width **A11** as measured side to side at a maximum width at a trapezoidal base **B1**. The first width **A3** is greater than the second width **A8** and the third width **A11**. The third width **A11** is greater than the second width **A8**.

However, Fisher et al. fail to disclose the device made of molded plastic material. However, Fisher et al. suggest at column 6, lines 2-13, that changes in material may be made and since the grout mixture would change depending upon the anchoring device, i.e., the beam, being used, one would be motivated to use a plastic anchoring device suitable with a grout mixture to be used with plastic for making a play house. Furthermore, Aschheim teaches in column 1, lines 22-27, that anchoring device, i.e., the

sustainer, can be made of plastic as an alternative material for sustaining episodic loads. Therefore, as taught by Aschheim, it would have been obvious to one of ordinary skill in the art at the time the invention was made to. Given the modification, it is known that plastic material is capable of having a metal fastener driven through.

Applicant is reminded that the anchoring device can be adapted to maintain the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon a support board which two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al., 5,704,181, in view of Aschheim, 6,012,256, as applied to claim 29, and further in view of Naccarato, 6,442,908.

Regarding claim 30, Fisher et al., as modified above, fail disclose the vertical support member **14c** having recesses with support columns located therebetween. Naccarato et al. teach, in Figs. 4 and 5, a vertical support member **14c** having recesses **15** to promote optimal flow of grout material through the support member (col. 5, lines 29-35). Therefore, as taught by Naccarato et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include recesses in the vertical support member to promote optimal flow of grout material through the support

member. Applicant is reminded that columns will be inherently located between the recesses as shown in Figure 3 of Naccarato et al.

Claims 33 and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., 6,363,677, in view of Livezey, Jr., 3,045,294.

Regarding claim 33, Chen et al. disclose, in Figure 5(a) or Figure 10, a decking system comprising boards **A20** (see marked-up attachment provided in the Office action dated December 29, 2004) and an anchoring device **A26**. Each of the boards **A20** has a top **A21**, a bottom **A22**, two sides **A23** and two ends **A24**. At least one groove **A25** is located along one of the sides **A23**. The anchoring device **A26** consists essentially of a substantially flat horizontal top element **A1**, at least one substantially vertical support member **A5**, and a substantially flat horizontal bottom element **A9**. The top element **A1** has a top view configuration including two sides **A2** and a predetermined first width **A3** as measured side to side. The first width **A3** is measured at a maximum width between the sides **A2**. The top element **A1** has an imaginary center line **A4**. The support member **A5** is attached to an underside **A6** of the top element **A1** along the center line **A4** and the support member **A5** extends downwardly therefrom. The support member **A5** has two sides **A7** and a predetermined second width **A8** as measured side to side at a maximum width. The bottom element **A9** has a flat bottom view configuration, which includes sides **A10**, and having a generally trapezoidal shape, and a predetermined third width **A11** as measured side to side at a maximum width at a trapezoidal base **B1**.

The first width **A3** is greater than the second width **A8** and the third width **A11**. The third width **A11** is greater than the second width **A8**. The device is made of molded plastic material capable of having a metal fastener driven through (col. 7, lines 56-60).

However, Chen et al., fails to disclose a support board and the decking boards **A20** situated atop the support board **A20**. Livezey, Jr. teaches, in Figures 1 and 3, a decking system comprising a support board **25** and decking boards **10** atop the support board **25** to resiliently support the decking boards **10** and provide a dead air space intermediate a sub-floor and the decking boards **10** (col. 3, lines 25-34; col. 4, lines 27-30). Therefore, as taught by Livezey, Jr., it would have been obvious to one of ordinary skill in the art at the time the invention was made to further provide Chen et al. with a support board and situate the decking boards of Chen et al. atop the support board to resiliently support the decking boards and provide a dead air space intermediate a sub-floor and the decking boards.

Applicant is reminded that the anchoring device can be adapted to maintain the top element in a predetermined position during use for joinder of two adjacent boards which have been pre-cut with receiving slots, and to position the bottom element upon the support board on which two adjacent boards rest for attachment of the anchoring device to the support board for anchoring and support of the two adjacent boards.

Further, for the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising". See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355. See MPEP 2111.03.

Regarding claim 35, Chen et al. disclose the two sides **A2** of the top element **A1** are symmetric to one another.

Regarding claim 36, Chen et al. disclose the groove **A25** establishes an upper half **A30** of each of the boards **A20** above the groove **A25** and a lower half **A31** of each of the boards **A20** below the groove **A25**. The upper half **A30** has a greater width than the lower half **A31** (compare widths **A32** and **A33**).

Regarding claim 37, Chen et al. disclose the boards **A20** are made of material selected from the group consisting of synthetic polymers, at least partially foamed synthetic polymers, wood, wood composite, and combinations thereof (col. 4, lines 22-50).

Regarding claim 38, Chen et al. disclose the two sides **A2** of the top element **A1** are parallel to one another.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., 6,363,677, in view of Livezey, Jr., 3,045,294, as applied to claims 33 and 35-38, and further in view of Curtis, Jr. 4,154,172.

Regarding claim 34, Chen et al., as discussed fails to disclose the vertical support member having recesses with support columns located therebetween. Curtis, Jr. teaches in Figure 2 and 4, a support column **17'**, **21** having recesses to allow the insertion of a fastener therethrough (col. 2, lines 30-33, and col. 2, line 68, to column 3, line 4. Therefore, as taught by Curtis, Jr., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include recesses on the vertical support member to allow the insertion of a fastener. Given the modification, support columns would have been located between the recesses in general.

### ***Response to Arguments***

Applicant's reiterated arguments filed February 12, 2009 have been fully considered but they are not persuasive. Applicant has presented many of the same arguments for claims 29-32 as found in the appeal brief dated December 31, 2007, and on the response dated July 23, 2008 and these arguments have already been addressed by the examiner in the last Office action and on the action dated April 2, 2008.

With respect to Child, applicant argues, at page 19 that the applicant's anchoring device is structurally distinguished from the preformed grouting strip of Child. In response, the argument does not specifically point out what is structurally different. The remarks, at page 19, mention that the strip of the British patent must be sufficiently elongated to extend at least over substantially the full edge length of each tile. This in itself does not distinguish over what Child is lacking to avoid anticipating the claim. Applicant further argues that the strips of Child have different structure than applicant's decking board anchoring device. In response, this might be so. However, it is not the structure that is different about Child but rather what is Child lacking so that the reference does not anticipate the claim. Note that the arguments do not set forth any structure found in the claim that Child lacks or being structurally different than that of Child.

Applicant further argues that the anchoring device of claim 29 have material structural differences inherent in their different functions. In response, it should be noted that functions and structures are two different concepts and patentability is based on structural differences and not what the device does or performs. If applicant is concern with the functions of the device, than applicant should consider applying for method claims as this would cover what the device does or how it operates.

Applicant further argues, at page 22, that the functional limitations in fact positively recite further structural limitations that distinguish the anchoring device of

claim 29. In response, what structure is that? Note that neither the argument nor the claim set forth the structure that defines the functional limitation. Note that applicant is mixing the concept of functions with structure or vice versa. Applicant then argues that the British patent has not disclosure whatsoever that width A8 of top element A10 is shaped and dimensioned so as to permit it to be received in a groove of any tile or other article, and that the T-section strip appointed by the examiner is for use with a plain-edge tile. In response, applicant is arguing the intended use. Again, the claim does not require that the width of the top element is received in a groove of any tile or other article for anticipation. The language merely sets forth what the top element is intended to do. As far as Child is concern, the language is met since the width A8 of top element A10 inherently is shaped and dimensioned. The shape and the dimension shown definitely will allow it to be received in a groove of any tile or other article as intended to do. Is applicant disputing that this cannot be so? The examiner differs since a groove in a tile comes in different shapes and sizes and the width of the top element can be inserted into a groove without any problem. Again, it is the structural difference that is to be determined and not how one intends to use the top element.

With respect to Fisher et al., as modified by Aschheim, applicant argues that there is no disclosure or suggestion of any device having the construction, including the dimensions or functionality, of the anchoring device of claim 29. In response, the argument fails to particularly point out the language of the claim that renders being constructively different or the actual dimensions. Applicant mentions the lack of

functionality being in Fisher et al. However, patentability is based on structural differences and not how the device functions. Applicant further argues the orientation of the device in Fisher et al. and that top and bottom as used in terms of ordinary language. First of all, orientation has nothing to do with patentability. Is applicant implying that one placing the device disclosed by applicant in an inverted position not the same as if it were shown in the drawing? Accordingly, it is the same device no matter what orientation it is placed. This could just happen during handling of the device by hand or during manufacturing. Further, it should also be noted that when these devices are manufactured, their orientation is not always the same when they come out from molding as that orientation shown in the drawings. The terms "top" and "bottom" are merely relative terms. In other words, top to what and bottom to what. Applicant then mentions that Fisher et al. define the bottom by the direction of gravity. In response, it should be noted that the rejected claims has no mention of gravity and neither Fisher et al. utilizes the term "gravity" anywhere.

With respect Fisher et al., applicant argues that the inversion of beam 14 in an actual building structure employing the construction depicted by Figures 1 and 2 of Fisher et al. would have disastrous consequences. In response, this of course will depend and the argument is off topic since the device as claimed in claim 29 is not claimed employed in construction or installed. It does not matter what orientation the device is placed. The device of Fisher et al. is still the same as defined by the structure defined by the rejected claim 29. There's nothing structural different about the

applicant's and that of Fisher et al. Orientation of the drawings does not define structural differences when the device is still the same no matter which way the device is orientated.

Applicant further argues that no plastic structure would conceivably have sufficient strength for it to support 6-12 inch thick concrete planks. In response, it should be noted that it is known that some plastic materials are much stronger than steel and definitely Aschheim can attest to that since he himself suggests using plastic or steel. Obviously, one would recognize that the plastic has to be selected to withstand forces similar to steel as common sense.

In response to applicant's argument that Fisher et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the device of Fisher et al. is analogous art since the device found in Fisher et al. is an anchoring device for attaching decking boards to supporting beams. Further, it should be noted that claim 29 does not require that the device be attached to the decking boards to supporting beams. This is only at claim 33 that the problem is apparently attempted to be tackled.

With respect to Naccarato, applicant keeps referring to the device as being asymmetrical. It is unclear how the applicant arrives to such conclusion when the device shown in Figure 4 is symmetrical along an axis of the sheet of paper. Applicant further argues that the device of Naccarato is not made of molded plastic. In response, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant then argues that the instant applicant has no grouting. In response, the question is what the device has, as claimed, since that is what is being anticipated, rather what the device does not have.

With respect to Child in view of Curtis, Jr., applicant argues that the examiner has not pointed to any disclosure or suggestion in Curtis, Jr. to the contrary. In response, the rejection makes clear where the reference suggests such motivation. The examiner indicated in the rejection that this is found at “(col. 2, lines 30-33, and col. 2, line 68, to column 3, line 4)”. Applicant then argues that the identification of items 17’ and 21 of Curtis, Jr. are not support columns but rather fastening member and a vertical platelike body portion of a fastening member. In response, it should be noted that semantics does not render patentability. The fact that Curtis Jr. labels these parts by different names does not obviate anticipation when these are support columns in the

broadest reasonable interpretation. Applicant further argues that the material used by Curtis is steel and not made of plastic as required by claim 29, on which claim 30 depends. In response, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant is reminded that Child already teaches the device being made of plastic and thus is not required that Curtis, Jr. also teach the device made of plastic.

Applicant further argues that a small hole, such as hole 29 in Curtis, Jr., does not create a columnar structure in the Curtis device. In response, applicant is correct in that one hole does not render a columnar structure. However, it is an obvious modification to place more than one hole rather than just one hole to fasten the device. This duplication of parts renders columnar structures, in particular, when three holes are duplicated. The spaces left between the holes would render there being columnar structures, two in this example, as the recesses or holes inherently create these columnar structures left by the material between the holes or recesses.

With respect to Chen et al. in view of Livezey, Jr., applicant argues that the examiner has not pointed to any single, unitary structure that embodies the anchoring device included in the system of claim 33. In response, Chen et al. is used to teach a single, unitary structure, in the broadest reasonable interpretation. It should be noted

that claim 33 does not require that there be a "single structure" and thus the argument is not commensurate with the claimed invention. Further, the arguments are moot in view of the 35 USC 112, 2<sup>nd</sup> paragraph rejection. Note that claim 33 sets forth a listing of parts and not really a system as argued. With respect to the argument relating to "consisting essentially of" language, the Office has made of record how this limitation is read in light of no definition being set forth in the disclosure.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/E. G./  
Examiner, Art Unit 3679  
March 9, 2009

/Daniel P. Stodola/  
Supervisory Patent Examiner, Art Unit 3679